

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12339
Docket No. 12299
92-2-91-2-85

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal of discipline of dismissal imposed upon Electrician R. N. Tandy, Avon, Indiana. Claim was denied by J. C. Thomas, Manager Labor Relations by letter dated July 26, 1990.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On May 31, 1990, the Carrier charged Claimant with excessive absenteeism, citing his absence without leave on May 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30, 1990, and his prior attendance record, as the basis for the charge. A Hearing was scheduled for June 14, 1990, but postponed to June 22, 1990, by the Employer. While the Claimant had been notified by certified mail of both scheduled dates for the Hearing, he did not appear at the June 14, 1990 Hearing but was represented by the Organization. Following that Hearing held in absentia, the Carrier served Claimant with notice of dismissal. An appeal Hearing requested by the Organization was held on July 19, 1990, which the Claimant did not attend but at which he was again represented by his Local Chairman. Following further appeal of this dismissal on the property up to and including the highest Carrier Representative designated to hear such appeal, the case was docketed before the Board for final adjudication.

The Organization is not contesting that the Claimant was absent on the dates listed on the charge. However, it protests that the trial was held in absentia, alleging that accordingly the trial in this case was not fair and impartial. It also contends that the Carrier failed to prove the charge of excessive absenteeism, stating, among other reasons, that some of the absenteeism was due to illness and that in holding the trial in absentia, the Carrier failed to develop all of the facts and extenuating circumstances surrounding the absenteeism before imposing discipline. It asks that the employee be reinstated with compensation for the difference between the amount he earned while out of service or while otherwise employed and the amount he would have earned on the basis of his assigned working hours during the period, plus other benefits to which he may have been entitled under the contract, and that the discipline be expunged from his record.

The Carrier argues that inasmuch as it notified the Claimant by certified mail of both scheduled Hearing dates (June 14 and 22), and given that neither notice was returned as being undeliverable, Claimant was absent at the trial of his own accord. The Carrier denies the Organization's contention that the Claimant was denied a fair Hearing because the Carrier held the Hearing in absentia. It cites two Second Division awards (see Awards 7844, 8225) to support its position that the Claimant was given proper notification of the Hearing and advised of his rights regarding witnesses and representation, that his decision not to attend was at his own peril, and that the Claimant must live with the consequences. In response to the Organization's Claim that the Carrier failed to prove the charge of excessive absenteeism, the Carrier states that the employee was absent a total of 22 days from February 13, 1990, through May 30, 1990, after receiving a letter of warning from the shop manager about his absenteeism on December 28, 1989, and that on the 12 particular dates cited in the Carrier's May 31 charge, the employee failed to even notify his shop or work location as required by Rule 8-I-2. That rule reads:

"An employee unable to report for work or detained from work for any cause will notify his shop or work location as soon as possible."

The Board has examined the total file, including the record of the Hearing, and all the supporting arbitration decisions cited by both parties. With respect to the Organization's Claim that the trial was not fair and impartial since it was held in absentia, the Board finds this contention to be without merit. Not only did the Carrier notify the Claimant of both trial dates by certified mail, with neither certified letter being returned by the postal service, but at the outset of the meeting the Hearing Officer asked numerous questions of the General Foreman as to whether he had received any information about the Claimant's whereabouts and allowed the Organization to ask similar questions of the Foreman. Several Second Division Awards have held that there is nothing improper with the Carrier's holding an Investigation with Claimant in absentia, provided the Carrier gives proper notification of the Hearing and advises the Claimant of his rights (see Second

Division Awards 7844, 8225) and that this does not constitute an unfair Investigation. See also SBA No. 894, Award 313, which states that the Claimant who chooses not to attend an Investigation is nonetheless bound by the record established at such Hearing and that "failure to attend constitutes a waiver of the procedural rights to which [one is] entitled under the applicable discipline rule."

With respect to the Organization's Claim that the Carrier failed to establish a record of excessive absenteeism, the Carrier established at the Hearing, through introduction of personnel records, that the Claimant had been absent a total of 22 days in 1990, with the majority of those days having been taken without authorization or notification to the Carrier. Several days were recorded for sick leave, and there had been four early quits or late starts. In 1989 he had been absent a total of 11 days and had taken four early quits or late starts, which prompted management to issue him a letter of warning about his absenteeism on December 28, 1989. On May 1, 1990, he was assessed a five-day suspension (deferred) for absenteeism, for which he had waived the scheduled trial on April 28, 1990. On June 14, 1990, he received 15 days suspension for failing to work on May 5, 6, 12, 13, and 14, which dates were considered with his previous attendance record in assessing discipline. Even if the Carrier were to waive the four days' sick leave that were recorded in 1990, that would not diminish a record of excessive absenteeism for a three-and-a-half month period (February 13 through May 30). The Organization's argument that, since the employee was on sick leave on May 14 and 15, perhaps the 12 days of continued absence after that might be regarded as due to illness is not persuasive, as neither the employee nor anyone in his family notified the employer as to the reason for his continued absence. Furthermore, in several decisions concerning this carrier, the Board has held that excessive absenteeism, even for legitimate reasons such as illness, is subject to discipline. See SBA No. 910, Award 32; PLB No. 2263, Award 37; PLB No. 2037, Award 67; and PLB No. 2945, Award 24.

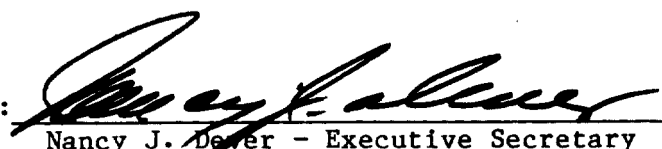
The Board finds that excessive absenteeism has been demonstrated by the Carrier and therefore upholds the dismissal of the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1992.